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Written statement* submitted by the Amnesty International, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[11 September 2015]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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The application of the death penalty for drug-related offences and its serious impact on the enjoyment of human rights

Amnesty International welcomes the discussion on the impact of the "world drug problem" on the enjoyment of human rights at this session of the Human Rights Council. The organisation draws the attention of this body to the prevalent use of the death penalty for drug-related offences.

Shahrul Izani bin Suparaman was 19 years old when he was found in possession of 622 grams of cannabis in Malaysia in September 2003. Because of the amount, he was automatically presumed to be trafficking drugs, a crime for which a death sentence is mandatory in Malaysia. He is currently appealing for clemency from the authorities.

Shahrul Izani is one of many cases Amnesty International has recorded of a young person sentenced for possession of drugs to pay with their life. Malaysia is not the only country to punish drug-related offences with the death penalty.

Drug-related offences, which include a variety of different charges ranging from drug trafficking to drug possession, are punished or punishable by death in Bahrain, Bangladesh, Brunei Darussalam, China, Cuba, Democratic People's Republic of Korea, Democratic Republic of the Congo, Egypt, Guyana, India, Indonesia, Iran, Iraq, Jordan, Kuwait, Laos, Libya, Malaysia, Myanmar, Oman, Pakistan, Qatar, Saudi Arabia, Singapore, Republic of Korea, South Sudan, Sri Lanka, Sudan, Syria, Thailand, United Arab Emirates, United States of America, Viet Nam and Yemen. [1]

Despite the fact that mandatory death sentences, even for the most serious crimes, are contrary to international law,[2] drug-related offences are mandatorily punished by death in several countries including Iran, Malaysia and Singapore.[3]

In at least three countries - Brunei Darussalam, Malaysia and Singapore - defendants found with specified amounts of certain drugs, or even simply in possession of keys to a building or vehicle in which such drugs are found, are presumed guilty of drug trafficking. In those circumstances, the burden of proof is shifted onto the defendant, in violation of the presumption of innocence and fair trial rights.[4]

According to the *Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty*, "[i]n countries which have not abolished the death penalty, capital punishment may be imposed only for the most serious crimes, it

[1] This list covers offences that include drug trafficking resulting into death, drug trafficking not resulting into death, and drug trafficking by agents of the state.

[2] The UN Human Rights Committee has said that "the automatic and mandatory imposition of the death penalty constitutes an arbitrary deprivation of life, in violation of Article 6, paragraph 1, of the [International] Covenant [on Civil and Political Rights], in circumstances where the death penalty is imposed without any possibility of taking into account the defendant's personal circumstances or the circumstances of the particular offence". Pagdayawon Rolando v Philippines, Views of the Human Rights Committee, Communication No. 1110/2002, UN document CCPR/C/82/D/1110/2002, 8 December 2004, para. 5.2.

[3] While some sentencing discretion was introduced in Singapore under the Misuse of Drugs Act in 2012, defendants can still be mandatorily sentenced to death. Only defendants who have demonstrated that they were merely drug "couriers" and are provided with a certificate "substantive assistance" by the Attorney General's Office can be sentenced at the judge's discretion to death or life imprisonment and 15 strokes of the cane. Persons with a demonstrated mental disability which was relevant at the commission of the crime can only be sentenced to life imprisonment.

[4] Drug trafficking is presumed if the defendant is found in possession of a quantity of prohibited substance greater than a specified minimum.

being understood that their scope should not go beyond intentional crimes, with lethal or other extremely grave consequences."[5]

Drug-related offences do not meet the threshold of "most serious crimes" for which the death penalty may be imposed under Article 6 of the International Covenant on Civil and Political Rights and other international and regional treaties.

The UN Human Rights Committee has found, on numerous occasions, that drug-related offences do not meet the criterion of "most serious crimes",[6] a finding reiterated by the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment [7] and the UN Special Rapporteur on extrajudicial, summary or arbitrary executions.[8] Most recently, Christof Heyns, UN Special Rapporteur on extrajudicial, summary or arbitrary executions, stated in his 2012 report, "Domestic law should provide that death sentences may never be mandatory and may be imposed only for those crimes that involve intentional killing. The death penalty may not be imposed for drug-related offences unless they meet this requirement." [9]

Despite the clear and repeated determinations of UN human rights mechanisms, numerous countries continue to use the death penalty for drug-related offences. In 2014, Amnesty International recorded that the death penalty was imposed or carried out for drug-related offences in at least 10 countries: China, Indonesia, Iran, Malaysia, Saudi Arabia, Singapore, Sri Lanka, Thailand, United Arab Emirates and Viet Nam.[10]

In 2015, executions for drug-related crimes have been recorded in China, Iran (241, from official and unofficial sources, as of 28 April 2015), Indonesia (14 as of 28 August 2015) and Saudi Arabia (58 as of 28 August 2015).[11]

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5 Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty adopted by the UN Economic and Social Council (ECOSOC) in resolution 1984/50 of 25 May 1984 and endorsed by UN General Assembly in resolution 39/118, adopted without a vote, on 14 December 1984.

6 UN Human Rights Committee (8 July 2005), Concluding observations: Thailand. CCPR/CO/84/THA, para. 14; UN Human Rights Committee (29 August 2007), Concluding observations: Sudan. CCPR/C/SDN/CO/3, para. 19.

7 Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, 14 January 2009, A/HRC/10/44, para. 66.

8 Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston, 29 January 2007, UN Doc. A/HRC/4/20, para. 53.

9 Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, 9 August 2012, A/67/275, para.122.

10 Amnesty International, Death sentences and executions in 2014 (ACT 50/001/2015), available at: https://www.amnesty.org/en/documents/act50/0001/2015/en/ [last accessed on 10 September 2015]. Amnesty International reports only on executions, death sentences and other aspects of the use of the death penalty, such as commutations and exonerations, where there is reasonable confirmation. In many countries governments do not publish information on their use of the death penalty, making confirmation of the use challenging. Therefore, with only a few exceptions, Amnesty International's figures on the use of the death penalty are minimum figures.

11 See for example Saudi Arabia: Rampant executions in a justice system lacking basic safeguards, Amnesty International written statement to the 30th session of the UN Human Rights Council, 1 September 2015 (MDE 23/2348/2015), available at https://www.amnesty.org/en/documents/mde23/2348/2015/en/ [last accessed on 10 September 2015].

Amnesty International received reports indicating that death sentences continued to be imposed for drug-related offences in 2015 in China, Indonesia, Iran, Kuwait, Malaysia, Saudi Arabia, Sri Lanka, United Arab Emirates and Viet Nam.

Amnesty International has been documenting continued violations of the right to a fair trial and the right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment in cases where defendants face or have faced the death penalty for drug-related offences. The organisation has also highlighted how defendants from economically disadvantaged backgrounds and foreign nationals are disproportionately affected by the death penalty, including for drug-related crimes.

Recommendations

Pending full abolition of the death penalty, Amnesty International urges the Human Rights Council, its members and observer states to urge all countries that retain the death penalty to:

- Establish an official moratorium on executions with a view to abolishing the death penalty, as called for by five resolutions adopted by the UN General Assembly resolutions, including most recently 69/186 of 18 December 2014;
- Commute without delay all death sentences;
- Immediately remove all provisions in national law that are in breach of international human rights law, in particular:
    - by abolishing all provisions that provide for mandatory death sentences, and
    - by restricting the imposition of the death penalty to intentional killing;
- Ensure rigorous compliance in all death penalty cases with international standards for fair trials;
- Ensure that foreign nationals arrested, detained or imprisoned have adequate access to consular and interpretation services.

Amnesty International also urges the Human Rights Council to work with the Office of the High Commissioner for Human Rights, the UN Office on Drugs and Crime and other UN entities involved in counter-narcotics operations, as well as Member States, to ensure that all programmes and policies are carried out in full compliance with international law and other standards applicable to the use of the death penalty and do not contribute to the use of the death penalty in connection with drug offences.

It also calls on States and other stakeholders to ensure that the outcome of the next UN General Assembly Special Session (UNGASS) on drugs to be held in 2016 and other related discussions ensure that the respect and protection of human rights are an integral part of drug policies.